

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CACR 06-219

February 7, 2007

RUBY WATSON,
APPELLANT

AN APPEAL FROM JEFFERSON
COUNTY CIRCUIT COURT
[CR 2004-364-2]

V.

HON. JODIE RAINES DENNIS, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Ruby Watson appeals from her conviction for second-degree discharge of a firearm from a vehicle. She argues that the trial court erred in not dismissing the charges because the information in this case did not allege that she was involved in any gang activity or an ongoing criminal enterprise. Alternatively, she argues that her conviction should be reversed because the evidence did not support a finding of guilt. We affirm Watson's conviction but do not reach the merits because she failed to preserve her arguments for appellate review.

On April 7, 2004, shots were fired from a vehicle toward the home of Kim Smith at 1107 Cypress Street in Pine Bluff, Arkansas. Sandy Robinson, Emma Powell, and Smith had returned from Arthur's Barbeque, located one-and-one half blocks from Smith's residence. As they exited their vehicle, they saw Watson and a woman identified as "Lisa" opening the

trunk of a red Dodge Spirit across the street from Smith's home. Robinson, Powell, and Smith went into the house; Robinson peered from around the doorway. Robinson identified Watson in open court and testified that Watson fired a gun in the air and then fired at her from the red vehicle. According to Robinson, Lisa drove the vehicle, Watson was in the passenger seat, and Watson's sister, Stephanie, rode in the back seat. Powell also identified Watson in open court and stated that Watson was present in the vehicle from which shots were fired, but Powell did not see who fired the shots.

Detective Billy Bradley of the Pine Bluff Police Department responded to the incident. He was eating lunch at Arthur's Barbeque when he heard three or four gunshots. While traveling on Cypress Street to investigate, Bradley was flagged down by Robinson, who told him that Watson and her sister had just shot at Robinson and at Smith's residence from a small red Dodge. Robinson told Bradley where Watson lived and Watson was subsequently apprehended. No gun was found on Watson's person or in her vehicle; no bullet damage or bullet shells were found at Smith's residence.

Watson received a bench trial. At no time during the trial did she make a motion for a directed verdict or otherwise move for dismissal. The trial court found her guilty and sentenced her to serve six years in the Arkansas Department of Correction.

Watson now raises two arguments for reversal: that the charge should have been dismissed because there was no evidence she was involved in any gang-related activity or an ongoing criminal enterprise and that no substantial evidence supports her conviction. Because we hold that neither argument is preserved for appellate review, we affirm Watson's

conviction.

Pursuant to Arkansas Rule of Criminal Procedure 33.1(b), if a motion for dismissal is to be made in a nonjury trial, it shall be made at the close of all of the evidence and shall state the specific grounds therefor. If a defendant moves for dismissal at the conclusion of the prosecution's evidence, she must also renew the motion at the close of all of the evidence. Ark. R. Crim. P. 33.1(b). A defendant's failure to challenge the sufficiency of the evidence at the time and in the manner required in Rule 33.1(b) constitutes a waiver of any question pertaining to the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c).

Here, Watson never objected to the State's failure to allege in the information that she had committed the offense in furtherance of gang-related activity or an ongoing criminal enterprise. Thus, this argument is precluded because she attempts to raise it for the first time on appeal. *See Porter v. State*, 356 Ark. 17, 145 S.W.3d 376 (2004).

Moreover, Watson failed to preserve her argument regarding the sufficiency of the evidence because she failed to move for a directed verdict. As such, the trial court was never apprised of the specific elements of the crime that Watson now alleges the State failed to prove. In closing arguments, Watson's counsel challenged the proof that Watson was the person who fired the gun by attacking Robinson's credibility. However, counsel's argument was not a substitute for a directed-verdict motion, which must be made at the close of the evidence. *See Ark. R. Crim. P. 33.1(a) and (b); J.R. v. State*, 73 Ark. App. 194, 40 S.W.3d 342 (2001) (holding that appellate review of the defendant's sufficiency argument was precluded where it was made as part of his closing argument). Accordingly, Watson's

sufficiency challenge is not preserved for appellate review.

Affirmed.

PITTMAN, C.J. and VAUGHT, J., agree.